INDEX

	Page
Opinion below	2
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement	4
Reasons for granting the writ	9
Conclusion	22
Appendix	23

CITATIONS

Cases:

Aldridge v. *United States*, 283 U. S. 308	9
Baldwin Co. v. *Howard Co.*, 256 U. S. 35	11
Batchelor v. *Madison Park Corp.*, 25 Wash. 2d 907, 172 P. 2d 268	19
Best v. *District of Columbia*, 291 U. S. 411	9
Butterworth v. *Hoe*, 112 U. S. 50	11
Carver v. *Clephane*, 137 F. 2d 685	17
City of Roanoke v. *Elliott*, 123 Va. 393, 96 S. E. 819	13
City of Roanoke v. *Smith*, 164 Va. 65, 178 S. E. 676	13
Cochran v. *Bennett*, 37 Ga. App. 202, 139 S. E. 428	13
Davis v. *Forrester*, 188 Ga. 73, 2 S. E. 2d 601	14
Dist. of Columbia v. *Murphy*, 314 U. S. 441	10
Dist. of Columbia v. *Pace*, 320 U. S. 698	10
Dugger v. *Cox*, 110 F. 2d 834	13
Edgerton v. *Kingsland*, 168 F. 2d 128	17
Fox River Paper Co. v. *International Brotherhood*, 242 Wis. 113, 7 N. W. 2d 413	13
Gas-Light Co. of Augusta v. *West*, 78 Ga. 318	14
Hammond v. *Hull*, 131 F. 2d 23, certiorari denied, 318 U. S. 777	16
Interstate Commerce Commission v. *Oregon-Washington Rd. & Nav. Co.*, 288 U. S. 14	17
Keller v. *Potomac Electric Co.*, 261 U. S. 428	11
Loughran v. *Loughran*, 292 U. S. 216	10
National Mutual Ins. Co. v. *Tidewater Transfer Co., Inc.*, 337 U. S. 582	11
Philadelphia Underwriters v. *Folds*, 156 Ga. 773, 120 S. E. 102	13
Postum Cereal Co. v. *California Fig Nut Co.*, 272 U. S. 693	11
Reed v. *Allen*, 286 U. S. 191	9

Cases—Continued

	Page
Securities and Exchange Commission v. *U. S. Realty Co.*, 310 U. S. 434	17
State v. *Harrington*, 3 Terry 14 (Del.) 27 A. 2d 67	13
Thomas v. *Vinson*, 153 F. 2d 636	17
Tulman v. *Committee on Admissions and Grievances*, 135 F. 2d 268	17
Washington Fidelity Ins. Co. v. *Burton*, 287 U. S. 97	9
West v. *West Va. Fair Assn.*, 97 W. Va. 10, 125 S. E. 353	13

Statutes:

Act of March 3, 1933, 47 Stat. 1482, c. 206, Title 23, c. 6	4, 10
Act of May 24, 1949, P.L. No. 72, 81st Cong., 1st Sess., c. 139, Sec. 142	14
D. C. Code:	
Title 2, Sections 123, 129, 309, 406, 407, 516, 606, 806, 810	16
Section 17-101	12, 13, 14, 25
Section 17-103	
Section 23-601	4
Section 23-602	10, 23
Sections 23-603—23-607	10
Section 23-608	4, 10, 11, 20, 23
Section 23-612	10, 11, 14, 24
28 U.S.C. 1291	14

Miscellaneous:

Funk and Wagnall's New Standard Dict. (1947), p. 105	19
Rules Regulating Practice before the Criminal Division of Municipal Court, Rule 3(c)	20
Webster's New Int. Dict., 2d ed. (1948), p. 99	19
45 Yale L. J. 918 (1936)	19

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. —

BOLITHA J. LAWS, CHIEF JUDGE, AND JENNINGS BAILEY, F. DICKINSON LETTS, T. ALAN GOLDSBOROUGH, JAMES W. MORRIS, DAVID A. PINE, MATTHEW F. MCGUIRE, HENRY A. SCHWEINHAUT, ALEXANDER HOLTZOFF, RICHMOND B. KEECH, EDWARD M. CURRAN, AND EDWARD A. TAMM, DISTRICT JUDGES, COMPRISING THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, PETITIONERS

v.

JOHN W. CARTER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the United States District Court for the District of Columbia and the judges thereof, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled case

on August 1, 1949, and the preliminary orders entered on June 6, and June 13, 1949.

OPINION BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit (R. 65-70) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on August 1, 1949 (R. 71). Preliminary procedural orders, involved in this case, were entered on June 6 (R. 62) and June 13, 1949 (R. 64). By order of Mr. Justice Burton, dated September 10, 1949, time for filing a petition for a writ of certiorari from the orders of June 6, and 13, 1949, was extended to and including October 29, 1949 (R. 72).[1] The jurisdiction of this Court is invoked under the provisions of 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

On an *ex parte* application containing a material misrepresentation of fact, respondent was granted authority by the District Court for the District of Columbia, under the District of

---

[1] Petitioners are of the view that a petition which is timely as to the judgment of August 1, 1949, is also timely as to the preliminary procedural orders of June 6, and 13, 1949, but as a precautionary measure, and in order to obviate any possible objection on the ground of timeliness to presentation of issues involving the judgment of August 1, 1949, and the procedural issues involving the orders of June 6, and 13, 1949, in the same petition, application was made for the extension of time which was granted by Mr. Justice Burton.

Columbia bondsman statute, to engage in the bonding business in criminal cases in that court. On being apprised of the probable true facts, the District Court held a hearing to discover whether a material misrepresentation had actually been made to it, and, after full hearing, made such a finding, revoked its prior approval of the application, and reinstated it in pending status to await further investigation. Thereafter, the application was denied in due course, without further hearing or proceedings. Respondent took a direct *ex parte* appeal to the Court of Appeals, which, after refusing to permit a hearing on behalf of, or any participation by, the District Court in the appellate proceedings, reversed the District Court's orders. The questions presented are:

1. Whether the District Court's orders, involving an application to engage in the bonding business in that court, are appealable to the Court of Appeals.

2. Whether the Court of Appeals properly refused the District Court any right to participate or be heard in the appellate proceedings.

3. Whether the District Court acted within its authority in denying respondent's application to engage in the bonding business in that court.

STATUTES INVOLVED

The pertinent statutes involved are set forth in the Appendix, *infra,* pp. 23-26.

STATEMENT

The District of Columbia bondsman statute (Act of March 3, 1933, 47 Stat. 1482, c. 206, D. C. Code, Title 23, c. 6) requires all persons seeking to engage in the bonding business in the criminal courts in the District of Columbia to secure special authorization from each of the courts in which they seek to carry on such business.[2] Rules and regulations providing the qualifications of bondsmen, and the terms and conditions upon which the bonding business is to be carried on, are to be adopted by each court. The criminal division of the United States District Court for the District of Columbia is designated to make orders approving such applications and to grant such authority in that court, taking into consideration, under the statute and the court rule, "both the financial responsibility and the moral qualities of the person so applying" (Section 8). Authority to act as bondsman is renewable from time to time as the court may provide (Section 8); the District Court rules make the authorization renewable every two years.[3]

On or about November 17, 1947, respondent John W. Carter filed an application with the District Court, under this statute, to engage in the bonding

[2] The statute defines the "bonding business" as the "business of becoming surety for compensation upon bonds in criminal cases in the District of Columbia, and the word 'bondsman' means any person or corporation engaged either as principal or as agent, clerk, or representative of another in such business." Section 1.

[3] The pertinent District Court rules are set forth in the Court of Appeals' opinion, at R. 66-7.

business in criminal cases in that court (R. 1-3). As part of this application, Carter stated under oath that he had "never been charged and/or convicted of any offense involving moral turpitude" (R. 2). The application was approved by the Court —acting through Judge Pine—on November 18, 1947 (R. 3).

On December 5, 1947, Judge Pine was informed for the first time that Carter had in the past been charged with several offenses, at least some of which involved moral turpitude (R. 7). A conference was had in chambers on December 8, 1947, at which the applicant's attorneys endeavored to explain the apparent discrepancy between the statement in his application and the facts later brought to the court's attention (R. 7-17). After the conference, the District Court, through Judge Pine, issued a "Rule to Show Cause" (on December 9, 1947) which specifically referred to the discrepancy between the applicant's sworn statement as to his freedom from charges and the facts as to Carter's criminal charges which had been represented to the court. The rule required Carter to show good cause on December 16, 1947, why the court's authorization of November 18 should not be revoked (R. 17).

The applicant filed an Answer to the Rule to Show Cause (R. 18-19) and a supporting affidavit (R. 20-21), and the hearing prescribed by the Rule was held on December 16, 1947, before Judge Pine

(R. 21-32). Applicant was represented by counsel.[4] Undisputed official records of indictments and charges against Carter were presented to the court (R. 28-29). One of the indictments involved a charge of receiving stolen property (R. 35-36); other charges apparently involved the offense of gaming and promotion of lotteries (R. 17).[5] Full opportunity to offer evidence was afforded to appellant but was declined (R. 27-28). Argument was had as to the meaning of applicant's statement that he had never been "charged and/or convicted of any offense involving moral turpitude."

After hearing, the court concluded that (1) the reasonable interpretation of the critical words was that Carter had represented that he had never been charged with an offense involving moral turpitude; (2) if Carter had disclosed in his application the past charges raised against him, the court would have been induced by the existence of those charges to make further inquiry and investigation to ascertain whether the applicant was a suitable person, under the law, to engage in the business of writing bonds in criminal cases; and (3) the misrepresentation had been made in good faith on ad-

---

[4] Applicant's counsel filed what purported to be an Affidavit of Prejudice asking for the disqualification of Judge Pine (R. 23, 33-34), but this affidavit contained no allegation of personal bias or prejudice against Judge Pine, as applicant's attorney expressly admitted (R. 23, 26). A motion to disqualify—on the same general ground that the judge had already "made up [his] mind"—was also made at the hearing and denied (R. 22).

[5] None of these indictments or charges were prosecuted to a conviction (R. 28-29).

vice of counsel (R. 29-30). Accordingly, the court determined that its prior approval (of November 18, 1949) should be revoked, and the application reinstated "in exactly the same status it was in before the approval" (R. 30). The court announced that it would cause further investigation to be made to aid it in passing upon the application, and it also declared that it would receive any further evidence the applicant desired to submit (R. 30-32). The application was to be viewed as "an active, pending application" (R. 32). On December 19, 1947, the court entered an order revoking the approval given on November 18, 1947, to Carter's application (R. 35).

Thereafter, Carter presented to the court an affidavit and several letters in support of his application (R. 35-57). No request for further hearing was made. After consideration of the application and supporting material, and of the information rendered available to the District Court as a result of the inquiry initiated by Judge Pine, Carter's application was denied, on June 8, 1948, by the court in an order signed by the four judges then presiding in the criminal divisions of the District Court (R. 57).

On June 17, 1948, Carter filed a purported notice of appeal from the order of June 8 (R. 58). No adverse parties were named or served. The appeal was solely from the order of June 8, 1948, as it stated (R. 58). The respondent never sought review, by way of appeal or mandamus or any other

form of judicial review, from the order of December 19, 1947.

The case was argued in the Court of Appeals on behalf of the respondent, and by an Assistant United States Attorney as *amicus curiae*. The District Court was not represented.

Shortly thereafter, at the request of the District Court assembled in general term, the Solicitor General moved, on behalf of the District Court and its judges, for a hearing in the Court of Appeals and for leave to present oral argument and to file a written brief (R. 59-61). The Solicitor General also entered his appearance on behalf of the District Court and its judges (R. 65). In an order dated June 6, 1949, the Court of Appeals stated that it was treating the Solicitor General's motion "as a motion for reargument on behalf of *amicus curiae* United States Attorney in this cause," and setting the case for reargument "by said *amicus curiae*" (R. 62).

The Solicitor General then moved, on behalf of the District Court and its judges, to clarify and amend the order of June 6 so as "to provide for argument on behalf of the United States District Court for the District of Columbia and the judges thereof, rather than on behalf of the *amicus curiae* (the United States Attorney)" (R. 62-3). It was pointed out that the original motion was filed solely on behalf of the District Court and its judges, and that its purpose was to secure a hearing for the District Court and its judges and to have them

made parties for the purpose of protecting their direct interest in the disposition of this cause (R. 63). This motion was denied on June 13, 1949 (R. 64).

The matter was then argued on the merits by the Solicitor General, who, according to the Court of Appeals' opinion, "reargued on behalf of the United States Attorney as *amicus curiae*" (R. 65). The opinion, reversing the "orders of the District Court," was handed down on August 1, 1949 (R. 65-70). The mandate reversed both the order of December 19, 1947, and the order of June 8, 1948.

REASONS FOR GRANTING THE WRIT

This case presents a decided difference of view between the District Court, affirmatively petitioning this Court on its own behalf, and the Court of Appeals on an important matter directly touching the proper administration of criminal justice in the District of Columbia. As the final authority, by mandate of Congress, in all justiciable matters of judicial administration in the District of Columbia, this Court should definitively resolve the conflict and reestablish the system of licensing bail-bondsmen in the District on the footing Congress intended. However reluctant the Court may ordinarily be to take cases presenting mainly issues of local law, the unusual character of the present controversy and the nature of the questions presented justify the granting of the writ in this case.[6]

---

[6] Cf. for cases reviewing matters peculiar to the District of Columbia, *Aldridge* v. *United States*, 283 U. S. 308; *Reed* v.

I

The Court of Appeals seriously erred in entertaining the purported appeal from administrative, non-judicial, orders of the District Court.

A. Spurred by certain well-known scandals connected with the professional bonding-business in the District of Columbia courts, Congress passed the Act of March 3, 1933 (37 Stat. 1482, c. 206, Title 23, c. 6, of the District of Columbia Code) to regulate that occupation and provide for its supervision. The business was declared to be "impressed with a public interest" (Section 2, Sec. 23-602 D. C. Code), strict rules were laid down for the conduct of a bondsman's activities and his relations with prisoners and attorneys (Sections 3-7, Secs. 23-603—23-607), and the criminal courts were entrusted with the qualifications, authorization, and supervision of the carrying on of the bonding-business (Sections 8, 12, Sec. 23-608, 23-612). It was made the duty of the criminal courts (a) to provide reasonable rules and regulations for the qualifications of bondsmen and the terms and conditions upon which such business was to be carried on, (b) to authorize persons to engage in the bonding-business, and in doing so to "take into consideration both the financial responsibility and the moral qualities" of the applicant, and (c) to re-

---

Allen, 286 U. S. 191; *Best* v. *District of Columbia*, 291 U. S. 411; *Washington Fidelity Ins. Co.* v. *Burton*, 287 U. S. 97; *Loughran* v. *Loughran*, 292 U. S. 216; *District of Columbia* v. *Murphy*, 314 U. S. 441; *District of Columbia* v. *Pace*, 320 U. S. 698.

new from time to time the authorizations of persons engaging in the bonding-business (Section 8, Sec. 23-608). It was also expressly made the statutory duty of the criminal courts to see that the provisions of the Act are enforced (Section 12, Sec. 23-612).[7]

These provisions, and the entire structure of the bonding-business Act, make it clear, in petitioners' view, that the granting, denial, suspension, or revocation by petitioners of an application to engage in the bonding-business in that court pertains solely to the court's administrative and non-judicial functions. Because of the intimate connection of professional bondsmen with the proper administration of criminal justice, Congress entrusted the criminal courts with the task of overseeing their qualifications, good conduct, and business activities, and strongly emphasized its purpose to impose administrative and non-judicial duties on these courts by specifically making it their duty "to see that this Act is enforced" (Section 12, Sec. 23-612), a requirement peculiarly appropriate to the execution of administrative functions.[8]

---

[7] Section 12 (Sec. 23-612) likewise provides that "upon the impaneling of each grand jury in the District Court of the United States for the District of Columbia it shall be the duty of the judge impaneling said jury to give it in charge to the jury to investigate the manner in which this chapter [*i.e.*, the Act of March 3, 1933] is enforced and all violations thereof."

[8] Congress may, of course, confer purely administrative powers on the District Court for the District of Columbia. *Butterworth* v. *Hoe*, 112 U. S. 50; *Baldwin Co.* v. *Howard Co.*, 256 U. S. 35; *Keller* v. *Potomac Electric Co.*, 261 U. S. 428,

It necessarily follows that no action of petitioners in granting, denying, suspending, or revoking a bonding-business application is directly appealable to the Court of Appeals, any more than other administrative action of the District Court would be. The bondsman statute does not itself provide, either expressly or by implication, for any appellate review, and respondent is forced to rely on the general appeal provisions of Section 17-101 of the D. C. Code, Appendix, *infra*, pp. 25-26 ("any party aggrieved by any final order, judgment, or decree of the District Court * * * may appeal therefrom to the said United States Court of Appeals * * *"), which plainly governs only *judicial* orders, judgments, or decrees, and was not designed to cover the District Court's administrative orders like that involved here.

This conclusion is required by the established principles of appellate review which are best illustrated, for present purposes, by examples from state jurisprudence. For in many states of the Union the legislature has imposed various administrative duties, akin to that with which we are now concerned, upon the lower courts; and the case reports of these states provide forceful analogies for the conclusion that Section 17-101 does not open the doors of the Court of Appeals to appeals from nonjudicial administrative orders issued by the Dis-

---

442-443; *Postum Cereal Co.* v. *California Fig Nut Co.*, 272 U. S. 693; *National Mutual Ins. Co.* v. *Tidewater Transfer Co., Inc.*, 337 U. S. 582, 616, 638-639.

trict Court. In these states, the attempt has frequently been made to seek review of such administrative orders in the higher courts through general appeal provisions comparable to Section 17-101, only to meet with rejection on the ground that these general review statutes are limited to the *judicial* orders or decrees of the lower courts. For instance, appeals or writs of error have been held unavailable to review an order setting the compensation to be paid an assistant district attorney (*City of Roanoke* v. *Smith,* 164 Va. 65, 178 S. E. 676); an order appointing a labor arbitrator (*Fox River Paper Co.* v. *International Brotherhood,* 242 Wis. 113, 7 N. W. 2d 413) or an umpire for an insurance arbitration (*Philadelphia Underwriters* v. *Folds,* 156 Ga. 773, 120 S. E. 102); an order authorizing the state banking superintendent to sell the assets of a liquidated bank (*Cochran* v. *Bennett,* 37 Ga. App. 202, 139 S. E. 428);[9] a court determination that sufficient voters had approved the adoption of the city-manager plan of government (*City of Roanoke* v. *Elliott,* 123 Va. 393, 407-413, 96 S. E. 819, 824-826); the decision of a court sitting as a board to canvass state elections (*State* v. *Harrington,* 3 Terry 14 (Del.), 27 A. 2d 67, 75); an order directing the issuance of a certificate of incorporation to a municipality or private corporation (*West* v. *West Va. Fair Assn.,* 97 W. Va. 10, 125 S. E. 353;

[9] See also *Dugger* v. *Cox,* 110 F. 2d 834, 836 (C.A. 6) (and other similar cases) holding unreviewable a federal district court's order approving the sale of the assets of an insolvent national bank.

Gas-Light Co. of Augusta v. *West,* 78 Ga. 318); or a court order declaring a certain county office vacant (*Davis* v. *Forrester,* 188 Ga. 73, 2 S. E. 2d 601).

These are all instances in which a legislature has seen fit, as here, to entrust a lower court with certain administrative, non-judicial duties, and the pervading principle is that in such circumstances the normal appeal provisions applicable to truly judicial proceedings are not available. In the light of this principle, Section 17-101 of the District of Columbia Code does not afford any rights or remedy to respondent, and his appeal—which was premised solely on that provision of the Code—should have been dismissed outright.[10] Instead, the Court of Appeals erroneously characterized the District Court's orders as "judicial" (R. 70), and entertained the appeal.

B. We are very doubtful whether the granting, denial, suspension, or revocation of an application to become a bondsman is reviewable in any form by an appellate court. Congress has specifically placed the full duty of enforcement of the professional bondsman statute on the criminal divisions of the District Court (Section 12, Sec. 23-612), and has provided for the criminal divisions of that court to appoint, regulate, and supervise the conduct of the bonding business insofar as that court is concerned. The statute thus recognizes the close

[10] Section 17-101 was repealed by section 142 of the Act of May 24, 1949, Pub. Law No. 72, 81st Cong., 1st Sess.,

relationship between the proper performance of bonding functions and the fair and efficient administration of criminal justice which is the responsibility of a criminal trial court. Because of this intimate connection, the Act has made the regulation of bonding activities an integral part of the administrative business of the District Court.[11] And the conduct of that court's administrative business—whether it be the appointment of court clerks, commissioners, members of the Board of Education, or the promulgation of practice rules, or the qualification of bondsmen conducting business in that court—is normally not a matter for any review or supervision by other tribunals.

If, however, the petitioners' action on an application to engage in the bonding-business is subject to any judicial scrutiny, it must be through a proper proceeding in the nature of mandamus or for a mandatory injunction, in which the applicant alleges and proves arbitrary or capricious action or a gross abuse of discretion, and in which petitioners are parties and can avail themselves of the right to present a response and to be heard. In such an orderly proceeding, the tribunal to whom the petition for mandatory relief is addressed has the benefit of the views and evidence offered by the District

---

c. 139, but our argument is equally applicable to 28 U. S. C. 1291, which now governs appeals from the District Court to the Court of Appeals for the District of Columbia Circuit.

[11] As well as of the Municipal Court (formerly the police court) and the juvenile court—the other criminal courts in the District of Columbia.

Court and its judges, and a full adversary record, properly prepared and made up, is available for the deciding tribunal. This is the only procedure which can properly be followed in all reviewable bonding-business matters, including orders revoking a bondsman's license, since Congress has provided no other special method of review.[12] The Court of Appeals' own records reveal that, in the absence of a specific statutory mode of review or appeal, an action in the nature of mandamus or for a mandatory injunction is the only correct means of compelling administrative action, such as the award of a license or permit, or preventing its revocation or suspension. *E. g., Hammond* v. *Hull,*

---

[12] Title 2 of the District of Columbia Code contains several chapters dealing with the licensing, by various boards and commissions, of certain professions and occupations (*e. g.*, medicine, healing arts, dentistry, optometry, nursing, veterinary medicine, pharmacy). In some cases, on denial of an application for a license, Congress has specifically provided for an appeal or other method of judicial review, *e. g.*, sec. 2-129 (healing art—review of certiorari in District Court); sec. 2-1110 (barbers—review by appeal to District Court); sec. 2-406 (nurses—review by certiorari); sec. 2-606 (renewal of license to sell poisons—review in Court of Appeals). In other instances, Congress has made no provision at all for judicial review on denial of a license (*e. g.*, sec. 2-309, dentistry; sec. 2-516, optometry), or has expressly made the administrative determination "final and binding" (sec. 2-806, veterinarians); in these cases, the only method of judicial review, if any, would appear to be by way of mandamus. With respect to revocation or suspension of a license, the chapters of Title 2 generally provide, in specific terms, for some type of judicial review (*e. g.*, sec. 2-123, healing art; sec. 2-407, nurses; sec. 2-810, veterinarians).

We think that a comparison of these various provisions of Title 2 with those of the professional bondsman statute shows that when Congress has desired to provide an appeal or other direct method of judicial review from the refusal or revocation

131 F. 2d 23, certiorari denied, 318 U. S. 777; *Thomas* v. *Vinson,* 153 F. 2d 636; *Edgerton* v. *Kingsland,* 168 F. 2d 128; *Carver* v. *Clephane,* 137 F. 2d 685; cf. *Tulman* v. *Committee on Admissions and Grievances,* 135 F. 2d 268. That course was not followed here, but the Court of Appeals disregarded this grave defect in procedure.

II

Despite petitioners' direct interest, conferred by statute, in the granting, denial, suspension, and revocation of bonding-business permits, the Court of Appeals not only recognized an appeal which did not name petitioners (or any other person) as appellees or adverse parties, but also twice refused petitioners the right to intervene and participate in the appellate proceedings in defense of their statutory interests (R. 62, 64). As we have pointed out (*supra,* pp. 10-11, 14-15), in matters governed by the bondsman statute the District Court and its judges act administratively—as an administrative agency comparable, in its field, to the Interstate Commerce Commission or the Securities and Exchange Commission—and they are at least equally entitled to be heard when their orders are attacked. Cf. *Interstate Commerce Commission* v. *Oregon-Washington Rd. & Nav. Co.,* 288 U. S. 14; *Securities and Exchange Commission* v. *U. S. Realty Co.,* 310

---

of a license, it has so specified in the particular statute, and that in the absence of such an express provision the only remedy, if any, is by way of mandamus.

U. S. 434, 458 *ff*. There is no one else who can perform this function. For a court to entertain a challenge to an administrative order without hearing the tribunal which issued the order, or at least some other person directly interested in sustaining the order, is a non-adversary *ex parte* procedure unknown to our law. The District Court and its judges should clearly have been permitted to participate in the proceeding seeking review of their orders.[13] By like token, they have standing to present this petition for a writ of certiorari. If this were not so, there would be no method, and no person capable, of seeking correction by this Court of the Court of Appeals' errors.

III

All of the District Court's actions on Carter's application to become a bondsman in that court were fully within its authority.

A. The court had power to revoke, by its order of December 19, 1947, the *ex parte* approval previously given (on November 18, 1947) to respondent's application to engage in the bonding business in the District Court. This order of revocation was issued after a full hearing—at which the applicant, who had previously been informed of the nature of the tentative complaint against him, was fully heard through his attorneys and was permitted to present

[13] Arguments by an *amicus curiae*, though they may be helpful, are no substitute for participation by persons directly interested in the cause.

evidence—and after the court was entirely satisfied that the applicant had not correctly represented certain material facts relating to prior criminal charges which, if they had been disclosed before the approval of the application, would have led the court to make further inquiry and investigation before taking definitive action. The court's action was supported by the plain fact that respondent had made a statement in his application which would indicate to most people and to most lawyers that he had never been charged with a crime involving moral turpitude, and it later turned out that this was not so. The misrepresentation may have been made in all good faith, but it did in fact mislead the court, and the court's interpretation of the disputed words was certainly reasonable and quite forseeable.[14] And the existence of several charges involving gaming, promotion of lotteries, and receipt of stolen property undoubtedly bore directly on the applicant's "moral qualities" relevant to the conduct of a bonding business, which the statute expressly requires the court to take into consideration. *Infra,* p. 24; cf. R. 66.

Contrary to the Court of Appeals' holding, we submit that the District Court was empowered by the statute and its own rules thus (a) to revoke,

[14] See Webster's New Int. Dict., 2d ed. (1948), p. 99 ("Either *and* or *or*. 'Butter *and/or* eggs' means 'butter and eggs, or butter or eggs' " (Emphasis in original)); Funk and Wagnall's New Standard Dict. (1947), p. 105; *Batchelor* v. *Madison Park Corp.*, 25 Wash. 2d 907, 924-925, 172 P. 2d 268, 278; 45 Yale L. J. 918 (1936).

after full hearing, its approval of an application induced by even an honest, but very material, misrepresentation, (b) to reinstate the application in pending status so that the plenary investigation suggested by the true facts could be had, and (c) to treat the application thereafter as if it had never been approved. Perhaps the court could have revoked the permit outright, with finality, on account of a misrepresentation of this gravity; certainly, it could take the limited corrective action of erasing the initial approval induced by this affirmative and material misstatement. Whatever the nature of the "property" or "vested" right received by respondent as a result of the approval originally granted,[15] it was not proof against revocation, after

---

[15] The statute's stress on frequent renewal of the authorization to engage in the bonding business (Section 8, Sec. 23-608) indicates the temporary character of the privilege or license, and argues strongly against the erection of this license into a property or vested right. Under the provision that the bondsman's authority shall be renewed "from time to time at such periods as the court may by rule provide," the District Court could provide for renewal at least once every year, as does the Municipal Court (Rules Regulating Practice before the Criminal Division of the Municipal Court, Rule 3(c)); or could provide for renewal every six months, or each month, or any other period the court might determine. It is plain under the statute that the bondsman does not acquire any right to such renewal, no matter how often or how infrequently he is required to make application. The result is that in effect he holds his authorization at the will and discretion of the court; and holds it temporarily and until the expiration of the period fixed by rule of court.

Because of these vital facts, the status of a bondsman is far different from that of a member of the bar, to whom the Court of Appeals refers by way of analogy (R. 69). Upon admission to the bar, an attorney acquires a permanent status which endures for life, unless he resigns or is disbarred, and is not subject to periodic renewals or relicensing.

hearing, by the issuing authority on discovery that it had been materially misled into granting the permit by the applicant's affirmative, if honest, misstatement.[16] A negligent misstatement, inducing official action, surely cannot place an applicant on a higher plane than he would have obtained had the facts been correctly stated.

B. After placing respondent's application back as an "active, pending application" (R. 32), as if it had never been approved, the District Court then had full authority to pass upon and deny the pending application without further hearing, as it did in its order of June 8, 1948 (R. 57). In connection with such applications, the court is empowered to consider all available relevant information, including confidential material, just as it has always done in passing upon applications for admission to the bar, in appointing court clerks, United States Commissioners, assignment and motion commissioners, other court officials, referees in bankruptcy, special masters, or members of the Board of Education of the District of Columbia, as well as in sentencing prisoners on the basis of non-public probation reports. Not only is it unnecessary for the court to grant a hearing to bonding-business

[16] By consistently characterizing the case as if it involved only the later discovery by the court of circumstances which, if originally known, would have caused it to make further inquiry upon the original application (R. 69, 70), the Court of Appeals wholly blurs the cardinal fact that it was respondent's affirmative misrepresentation which kept the undiscovered circumstances from the approving court's knowledge.

applicants or to inform them of derogatory information available to the court, but it would seriously undermine the effective and salutary administration of the professional bondsman statute if such requirements were to be imposed. Respondent never requested a hearing after his application was reinstated in pending status on December 19, 1947, and he could not properly claim one. He was, however, accorded full opportunity to present character and other evidence in support of his application, and that is the most to which he was entitled. Accordingly, the District Court did not transgress any of his procedural or substantive rights in ultimately denying his application, and the order of denial was amply supported by information which, in the view of the members of the court participating in that order, clearly called for such action.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

OCTOBER 1949

APPENDIX

1. The pertinent portions of the Act of March 3, 1933, 47 Stat. 1482, ch. 206 (as contained in the District of Columbia Code) are as follows:

§ 23-602 (Section 2). *Business impressed with public interest.*

The business of becoming surety for compensation upon bonds in criminal cases in the District of Columbia is impressed with a public interest.

* * * * * * *

§ 23-608 (Section 8). *Qualifications of bondsmen—Rules to be prescribed by courts—List of agents to be furnished—Renewal of authority to act.*

It shall be the duty of the police court, juvenile court, and the criminal divisions of the District Court of the United States for the District of Columbia, each to provide, under reasonable rules and regulations, the qualifications of persons and corporations applying for authority to engage in the bonding business in criminal cases in the District of Columbia, and the terms and conditions upon which such business shall be carried on, and no person or corporation shall either as principal, or as agent, clerk, or representative of another, engage in the bonding business in any such court until he shall by order of the court be authorized to do so. Such courts, in making such rules and regulations, and in granting authority to persons to engage in the bonding

business, shall take into consideration both the financial responsibility and the moral qualities of the person so applying, and no person shall be permitted to engage, either as principal or agent, in the business of becoming surety upon bonds for compensation in criminal cases, who has ever been convicted of any offense involving moral turpitude, or who is not known to be a person of good moral character. It shall be the duty of each of said courts to require every person qualifying to engage in the bonding business as principal to file with said court a list showing the name, age, and residence of each person employed by said bondsman as agent, clerk, or representative in the bonding business, and require an affidavit from each of said persons stating that said person will abide by the terms and provisions of this chapter. Each of said courts shall require the authority of each of said persons to be renewed from time to time at such periods as the court may by rule provide, and before said authority shall be renewed the court shall require from each of said persons an affidavit that since his previous qualification to engage in the bonding business he has abided by the provisions of this chapter, and any person swearing falsely in any of said affidavits shall be guilty of perjury.

* * * * * * *

§23-612 (Section 12). *Enforcement.*

It shall be the duty of the police court, juvenile court, and of the criminal divisions of the

District Court of the United States for the District of Columbia to see that this chapter is enforced, and upon the impaneling of each grand jury in the District Court of the United States for the District of Columbia it shall be the duty of the judge impaneling said jury to give it in charge to the jury to investigate the manner in which this chapter is enforced and all violations thereof.

2. Section 17-101 of the District of Columbia Code provided:

District Court and Court of Appeals.

Any party aggrieved by any final order, judgment, or decree of the District Court of the United States for the District of Columbia, or of any justice thereof, may appeal therefrom to the said United States Court of Appeals for the District of Columbia; and upon such appeal the United States Court of Appeals for the District of Columbia shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just, except as provided in the following sections. Appeals shall also be allowed to said United States Court of Appeals for the District of Columbia from all interlocutory orders of the District Court of the United States for the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and also from any other interlocutory order, in

the discretion of the said United States Court of Appeals for the District of Columbia, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 883387 243